



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. E060 OF 2022

DOREEN

KARUGI.....

.....APPELLANT

VERSUS

EDWARD

MUTWIRI

IKIAO.....

.....RESPONDENT

**IN THE MATTER OF THE ESTATE OF STEPHEN THURANIRA
(DECEASED)**

***(An appeal from the Judgment of Hon. M.A. Odhiambo
(R.M) in Meru Succession Cause No. 289 of 2018
delivered on 13/5/2022)***

JUDGMENT

1. This Appeal arises from the Judgment of the learned Resident Magistrate Hon. M.A Odhiambo delivered on 13/5/2022 in Meru Succession Cause No. 289 of 2018, wherein the court revoked the grant hereinbefore issued

to the Appellant and issued a fresh grant to M'Itwamikwa M'Araigwa. Additionally, the trial court distributed L.R No. Kiirua/Ruiri/5242 to M'Itwamikwa M'Araigwa in whole.

2. Aggrieved by the said Judgment, the Appellant set forth the following grounds in the Memorandum of appeal dated 18th May, 2022;

1. The Learned Trial Magistrate erred in law and fact in irregularly revoking the appellant's grant and in issuing the same to respondent's witness one M'Mikwa M'Araigwa.
2. In the absence of proper/tangible evidence, the Learned Trial Magistrate erred in law and fact in making a wrong finding that the appellant was/is not a daughter/child of the deceased.
3. The Learned Trial Magistrate erred in law and fact in rubbishing the evidence of the appellant's witness one Grace Mucece thereby resulting in an unfair, prejudicial and wrong conclusion.
4. The Learned Trial Magistrate erred in law and fact in basing her decision on flimsy, remote, trivial and otherwise irrelevant considerations and technicalities

of procedure in lieu of applying a test suitable and compatible with the facts and nature of the case before her.

5. The Learned Trial Magistrate erred in law and fact in delivering an unfair, prejudicial and biased decision after adjourning her Ruling three times without giving any reasons and or justification for the same and which resulted in a grave miscarriage of justice.
6. The Honourable Trial Magistrate erred in law and fact in failing to take judicial notice of obvious matters among them that:-
 - a) A notification of birth is not proof of paternity and or a prerequisite for obtaining a birth certificate in Kenya.
 - b) There are no specific timelines in law as to when one can obtain a birth certificate in Kenya.
7. The Learned Trial Magistrate erred in law and fact in turning and or portraying herself as a DNA expert and in failing to caution herself that there was need for the respondent to prove to the required standard,

his allegation that the appellant was not a child of the deceased.

8. The Learned Trial Magistrate erred in law and fact in appointing the objector's witness one M'Mikwa M'Araigwa sole administrator of the deceased's estate and in distributing the whole of the Deceased estate comprised in LR. KIIRUA/RUIRI/5242 to the said administrator in total contravention of the law and without regard to the appellant's birthright to inheritance.
9. The Learned Trial Magistrate erred in law and fact in delivering a contradictory and self-defeating decision by appointing the respondent's witness M'Mikwa M'Araigwa sole legal administrator and distributing to him the entire estate of the deceased without cautioning herself that from the evidence on record, the said M'Mikwa M'Araigwa had actively participated in intermeddling in the same estate property.
10. The Learned Trial Magistrate erred in law and fact in setting out wrong issues for determination and in proceeding to analyze and evaluate the said issues

for determination in a divergent and partisan manner.

11. The Learned Trial Magistrate erred in law and fact in applying a wrong standard of proof in her ruling thereby reaching a wrong and prejudicial determination.
12. The Learned Trial Magistrate erred in law and fact in failing to properly evaluate and make a proper finding on the appellant's evidence and submissions.
13. The Learned Trial Magistrate erred in law and fact in applying to the matter, irrelevant jurisprudence and case law and which led her to a wrong and prejudicial conclusion.
14. The Learned Trial Magistrate erred in law and fact in reaching a finding and delivering a determination that was/is contrary to the law and the tenets of natural justice.
15. The Learned Trial Magistrate erred in law and fact in indirectly and technically distributing the entire estate of the deceased to the respondent/objector.

Evidence at Trial

3. **PW1 Edward Mutwiri** and the Respondent herein adopted his statement filed on 4/7/2020 as his evidence in chief. He told the court that the deceased was his uncle, and the Appellant was unknown to him because she was not a daughter of the deceased. The deceased, who was unmarried, had other nephews from the paternal side and brothers and sisters. The Appellant neither lived with the deceased nor attended his funeral, and her identity card read Doreen Karugi Moses while at the chief, she stated she was Doreen Karugi Stephen.
4. **PW2 M'Itwamikwa M'Araigua** adopted his statement filed on 14/7/2020 as his evidence in chief. He stated that the deceased, who was unmarried, was his firstborn child, the Respondent was his daughter's son while the Appellant was unknown to him. He had 5 other children who have since died save for Cosmas Kinyua, who has his own parcel of land.
5. **PW3 Magdaline Mwari** adopted her statement as her evidence in chief. She told the court that the deceased

was her elder brother while the Respondent's mother was Florence Kinyua. Cosmas Kinyua was also her brother, the deceased was unmarried with no children and she was unknown to the Appellant. She did not know where the deceased resided before his demise and the Appellant had never been home to tell them that the deceased was her father.

6. **PW4 Florence Kanyua** adopted her statement filed on 14/9/2020 as her evidence in chief. She stated that the deceased was her brother and he was living with her son, the Respondent herein as his own. The deceased did not tell them that he had a child and the Appellant was unknown to them. The Appellant's mother never came to inform them that she had a child with the deceased, and she was not interested in the estate of the deceased.
7. **PW5 Cosmas Kinyua** adopted his statement dated 14/7/2020 as his evidence in chief. He told the court that his brother, the deceased herein, did not have a family. The Appellant was unknown to him, and the deceased never told them that he had a child.

8. **PW6 Teresia Mwari** adopted her statement dated 14/7/2020 as her evidence in chief. She stated that the deceased and PW5 were her brothers, and the deceased never told them that he had a child. The deceased was an uncle to the Respondent, and they authorized him to file the cause on their behalf.
9. **PW7 Henry Kinoti** adopted his statement as his evidence in chief. He purchased 1 acre of land parcel No. 5242 from the deceased, for a consideration of Ksh. 800,000. The Respondent was a nephew of the deceased, who did not have a wife, and the family of the deceased utilized $\frac{1}{2}$ of the land.
10. **PW8 Janerose Kawira**, the area chief of Ruiru Location produced the letter dated 29/1/2021 as P Exh. 4. On 31/7/2018, the Appellant was summoned by the acting chief namely the late Richard Marete, to produce evidence that she was a daughter of the deceased, which she failed to do, and the introduction letter was issued to Mikwa's family. The deceased was unmarried and childless, and the Respondent was his nephew.

11. **DW1 Doreen Karugi Moses**, and the Appellant herein testified that she lived at her grandmother's place at Laari, and her mother, Grace Mucece told her that her biological father was Stephen Thurania, the deceased herein, but Moses Munoru Ithale, her stepfather's name, is the one which appears on her identity card. She did not live with the deceased, but he would visit her, and Moses is married to her mother. The father of the deceased is alive, and she attended the 4 meetings at the Deputy County Commissioner. When the area chief of Ruiru declined to issue her a letter, the Deputy County Commissioner directed the chief of Ntunene to do so. The deceased last visited them in 1995 when she was 2 years old, and she used her stepfather's name (now deceased) to apply for her Identity card because she could not trace her biological father. She obtained the Identity card in 2014 when the deceased was alive, but was issued a birth certificate after his death.

12. **DW2 Murugi Matumbi**, the area chief of Ntunene adopted the report dated 3/2/2021 as his evidence in chief. He stated that he knew the deceased herein, and he

is the one who drafted the letter issued to the Appellant at the behest of the County Commissioner Meru. The deceased, who had one wife, was last in his location in 1996, and the Appellant's mother got married after his demise. In 1994, the deceased, Kinyua and the Appellant's grandmother came to his location for a naming ceremony, and although the deceased was from Ruiru, there was a time he lived in Ntunene.

13. **DW3 Grace Mucece**, stated that the Appellant was her daughter with the deceased, although she was not married to him, but according to the Appellant's Identity card, Moses was her father. In 2016, she took the Appellant to the deceased and his father and introduced her as his daughter, but did not have the minutes of the meeting held on 3/8/2018. They were married traditionally, but 'ruracio' was not done, and they met at work and sired a child. The Identity card was taken with details of Moses because they could not trace the deceased.
14. **DW4 Joseph Murerwa Mboriki** adopted his statement recorded on 24/8/2020 as his evidence in chief. He told

the court that he knew the Appellant and the Respondent, and he was sent by DW3 to the home of the deceased to inform him that they had a child who needed to be named. The Appellant came home when she was a child to meet her father, the deceased herein, and the deceased told all his family members about her.

15. **DW5 Francis Mwiti Wanderi** adopted his statement as his evidence in chief. He told the court that the Appellant and the Respondent were known to him, and the deceased, who was his friend, required his property to be bequeathed to his child, the Appellant herein. He knew the Appellant when the deceased passed on, and he attended all the meetings at the Deputy Commissioner.

Submissions

16. The Appellant through the firm of Ndubi Ondubi & Associates Advocates filed submissions dated 12/10/2023 faulting the trial court for relying on suspicion and other irrelevant considerations to discredit the Appellant's lawful birth certificate and paternity. The trial court was further faulted for literally overstepping its mandate and

exhibiting bias as there was no prayer for distribution in the Respondent's summons for revocation.

17. The Respondent through the firm of G.M. Wanjohi, Mutuma & Co. Advocates filed submissions dated 14/3/2025. Counsel argued that the Appellant failed to prove that she was the deceased's biological daughter, and cited **Re Estate of Justus M'Murithi M'Ibagiri (Deceased) [2019] KEHC 346 (KLR), Springboard Capital Limited v Njenga & Another (Civil Appeal 14 of 2024) [2024] KEHC 7013 (KLR), MKK v LGI (2021) eKLR, Re Estate of Harjit Singh Brah alias Harjit Singh Nihal (Deceased) (Succession Cause 3 of 2019) [2023] KEHC 35531 (KLR) and Re Estate George Ragui Karanja (Deceased) [2016] eKLR.**

Analysis and Determination

18. This being a first appeal, the court is obligated to reconsider and re-evaluate the evidence adduced in the trial court and draw its own conclusions.
19. In **Selle & another v Associated Motor Boat Co. Ltd [1968] EA**, the court held as follows: ***"This court is not bound necessarily to accept the findings of fact by***

the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

20. I have considered the appeal herein, the trial court’s Judgment which is the subject of this appeal as well as the submissions on record.

21. From the grounds of appeal, the singular issue for determination is whether the Appellant was the daughter of the deceased.

22. The age-old principle of law is that he who alleges must prove.

23. The Appellant testified that; ***“I do know my biological father. He is Stephen Thurania. We were not living together. There is a time my father was living at my mother’s home in Laari. This is what my mother told me.”***

24. The Appellant's mother stated that, ***"The petitioner's father is known to me. His father is Stephen Thurairara. The deceased was not my husband. As per the identity card records, Moses is the father of Doreen. Moses and I got married. I do not have documents as proof that deceased was her father."***

25. The Respondent herein, the father of the deceased and the siblings of the deceased, unequivocally refuted the contention that the Appellant was a daughter of the deceased, and asserted that the deceased was unmarried and childless throughout his lifetime until his demise. Their uncontroverted evidence was corroborated by PW8, the chief of Ruiru Location.

26. I find that the Appellant did not discharge the burden of proving that she was a daughter of the deceased, and the trial court was justified in reaching the decision it did.

27. The Appellant equally failed to prove either that she was being maintained by the deceased immediately prior to his death or that the deceased had taken her into his family as his own, to qualify as his dependant within the meaning of section 29 of the Law of Succession Act.

28. For the foregoing reasons, I find that the appeal is in want of merit and it is hereby dismissed. Parties to bear own costs of the appeal.

**DATED AND DELIVERED AT MERU THIS 1ST OCTOBER,
2025**

**S.M. GITHINJI
JUDGE**

APPEARANCES:-

Ms. Nyokabi holding brief Mr. Mutuma for the Respondent.

Ms. Otieno for the Appellant.